

Appl. No. : 10/063,538  
Filed : May 2, 2002

## REMARKS

### AMENDMENT UNDER 37 CFR 1.312

Applicants submit this amendment under 37 CFR 1.312 to correct the priority claim. Applicants respectfully request favorable consideration of this amendment and entry of the same.

### COMMENTS ON STATEMENT OF REASONS FOR ALLOWANCE

Applicants received a Notice of Allowability and Examiner's Statement of Reasons for Allowance mailed from the USPTO on September 21, 2006. Applicants submit the following Comments on the Examiner's Statement.

The Examiner's Statement includes the following:

Applicant relies on more than 130 references (see IDS filed 06/26/06), where expression levels of mRNA, measured by quantitative PCR, were found to have a good correlation to the expressed protein levels. ... While the PTO found several references in which protein expression levels did not correlate with mRNA levels measured by quantitative PCR, the majority of the references which were found, including those cited by Applicant, demonstrate a correlation between mRNA levels measured by quantitative PCR and protein expression levels. Applicant asserts that the expression levels of protein correlate to mRNA (cDNA) levels when the cDNA is measured by quantitative PCR (i.e. RTPCR). Applicant has provided more than 130 references in support of this position. *Notice of Allowability* at 4-5 (emphasis added, citation omitted).

Applicants have submitted as exhibits numerous references in support of their assertion that, generally speaking, differential mRNA expression levels (e.g., tumor tissue vs. normal tissue) result in similar differential expression levels of the encoded protein. In addition, Applicants have submitted several Information Disclosure Statements listing numerous additional references, including those submitted as exhibits. Applicants have not represented to the PTO that all of the references submitted to the PTO in an IDS support Applicants' assertions.

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Applicants have also argued that statements by the authors of Hu *et al.* (J. Proteome Res. 2003; 2(4):405-12), and LaBaer (Nature Biotech. 2003; 21:976-977), regarding the significance of differential mRNA expression detected by mRNA microarrays are not relevant to the data relied on by Applicants. Applicants' data in Example 18 of the instant application are based on RT-PCR, which is recognized by those of skill in the art as more sensitive and reliable than mRNA microarrays, and therefore the opinions of Hu and LaBaer regarding the significance of differential mRNA data from microarrays is not relevant to the instant application. Applicants' have not argued that microarray data are not reliable, or that all of the supporting references relied on by the Applicants' used quantitative RT-PCR to measure mRNA levels.

Finally, Applicants note for the record that they do not necessarily agree with the PTO's characterization of the references cited in the Examiner's statement of reasons for allowance. Applicants do agree with the PTO's conclusion that "based on the totality of evidence of record, one of skill in the art would find it more likely than not that an increase in message as measured by RTPCR would be predictive of an increase in protein expression levels, absent evidence to the contrary."

Respectfully submitted,

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Dated: Nov. 3, 2002

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